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IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

SPRING BRANCH MINING COMPANY, INC.,
LARAMIE MINING COMPANY, INC.,
KORCHLER COAL COMPANY, and
RICH CREEK MINING COMPANY, INC.,
Petitioners

v.

UNITED MINE WORKERS OF AMERICA 1950 PENSION TRUST AND 1950 PENSION PLAN, JOSEPH P. CONNORS, DONALD E. PIERCE, JR., WILLIAM P. JORDAN and PAUL R. DEAN, IN THEIR CAPACITIES AS TRUSTEES OF THE UMWA 1950 PENSION TRUST AND 1950 PENSION PLAN

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act of 1980 violate the Due Process Clause of the Fifth Amendment to the United States Constitution when applied to a withdrawn employer who had promised to contribute to a multiemployer pension plan but whose employees do not qualify for benefits from the plan.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
STATEMENT	1
SUMMARY OF ARGUMENT	8
ARGUMENT	8
I. THE DECISION BELOW ACCORDS WITH THIS COURT'S PRIOR DECISIONS UPHOLDING MPPAA AS A RATIONAL RESPONSE TO A LEGITIMATE LEGISLATIVE CONCERN	8
II. PETITIONERS RAISE NO NEW ISSUE CONCERNING THE BOUNDS OF SUBSTANTIVE DUE PROCESS	13
CONCLUSION	16

TABLE OF AUTHORITIES

CASES Page

Calvert & Youngblood Coal Co. v. UMWA 1950 and 1974 Pensions Plans, 5 Employee Benefits Cas. (BNA) ("E.B.C.") 2361 (1984) (Polak, Arb.), *enforced*, 6 E.B.C. 1106 (N.D. Ala. 1985) 9

Carmichael v. Southern Coal & Coke Co., 301 U.S. 495 (1937) 14

Central States Pension Fund v. Bellmont Trucking Co., 610 F. Supp. 1505 (N.D. Ind. 1985), *aff'd*, 788 F.2d 428 (7th Cir. 1986) 14

Connolly v. PBGC, 475 U.S. 211 (1986) 7, 11

Ferguson v. Skrupa, 372 U.S. 726 (1963) 10

National Railroad Passenger Corp. v. Atchison, Topeka and Santa Fe Railway Co., 470 U.S. 451 (1985) 10

Nobel State Bank v. Haskell, 219 U.S. 104 (1911) .. 14

Palmer Coking Coal Co. v. UMWA 1950 and 1974 Pension Plans, 5 E.B.C. 2369 (1984) (Gordon, Arb.) 3

PBGC v. R.A. Gray & Co., 467 U.S. 717 (1984) 2, 9

Roark v. Boyle, 439 F.2d 497 (D.C. Cir. 1970) 3, 12, 15

Short v. UMWA 1950 Pension Trust, 728 F.2d 528 (D.C. Cir. 1984) 3

UMWA Health and Retirement Funds v. Robinson, 455 U.S. 562 (1982) 2, 4, 12

Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976) 9, 10, 13

Washington Star Co. v. ITU Negotiated Pension Plan, 582 F. Supp. 301 (D.D.C. 1983), *aff'd*, 729 F.2d 1502 (D.C. Cir. 1984) 15

West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937) 14

Williamson v. Lee Optical Co., 348 U.S. 483 (1955) 10

TABLE OF AUTHORITIES—Continued

STATUTES Page

Employee Retirement Income Security Act of 1974, *as amended by* the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. § 1001, *et seq.* (1986)
29 U.S.C. §§ 1381-1383 2
29 U.S.C. § 1381(a) 5
29 U.S.C. § 1383(a)(2) 4
29 U.S.C. § 1391(c)(3) 5
29 U.S.C. § 1391(c)(3)(A) 5
29 U.S.C. § 1391(c)(3)(B) 5
29 U.S.C. § 1391(d)(1) 5
29 U.S.C. § 1401(a) 5

LEGISLATIVE HISTORY

H.R. Rep. No. 869 (Part I), 96th Cong., 2d Sess. 67, *reprinted in* 1980 U.S. Code Cong. & Admin. News 2918 2
126 Cong. Rec. 20,183 (1980) (Statement of Sen. Randolph) 9

OTHER MATERIALS

D. McGill, *Fundamentals of Private Pensions* (3d ed. 1975) 14

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BRIEF OF THE RESPONDENTS IN OPPOSITION

STATEMENT

This case arose from a withdrawal liability assessment made by the United Mine Workers of America 1950 Pension Plan ("1950 Pension Plan") pursuant to Title IV of the Employee Retirement Income Security Act of 1974

("ERISA"), *as amended by* the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"). C.A. App. 4-6.[1] MPPAA requires multiemployer pension plans like the 1950 Pension Plan to collect such liability from those employers maintaining the plan who cease contributing to and thereby "withdraw" from the plan. 29 U.S.C. §§ 1381-1383. Withdrawal liability represents the withdrawn employer's proportionate share of the plan's underfunding, and restores the loss to the plan's contribution base caused by the employer's withdrawal. *See generally PBGC v. R.A. Gray & Co.*, 467 U.S. 717, 721-25 (1984). According to MPPAA's drafters, "[t]he purpose of withdrawal liability is to relieve the funding burden on remaining employers and to eliminate the incentive [for employers] to pull out of a plan . . . ." H.R. Rep. No. 869 (Part I), 96th Cong., 2d Sess. 67, *reprinted in* 1980 U.S. Code Cong. & Admin. News 2918, 2935. More important, payment of withdrawal liability helps to ensure that the plan has sufficient assets to pay the pensions promised, but left unfunded, by the withdrawing employers. *PBGC v. R.A. Gray & Co.*, 467 U.S. at 725.

The 1950 Pension Plan and another plan, the UMWA 1974 Pension Plan ("1974 Pension Plan"), were established through collective bargaining in 1974 to continue the pension program of one of this nation's first multiemployer plans, the UMWA Welfare and Retirement Fund of 1950 ("1950 Fund"). *UMWA Health and Retirement Funds v. Robinson*, 455 U.S. 562, 566 (1982). That earlier Fund had been maintained under a series of collective bargaining agreements negotiated by the

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[1] References to the appendix to the Petition, which is bound with the Petition, are denoted "App. ——." References to the appendix in the court of appeals are denoted "C.A. App. ——." References to the single volume of exhibits in the court of appeals are denoted "E.V. ——."

United Mine Workers of America ("UMWA") and various coal industry employer groups between 1950 and 1974. *Id.* Under those agreements, the employers agreed to contribute a fixed amount to the Fund for each ton of coal they mined. A joint board of trustees appointed by the UMWA and employers then paid pensions from the Fund in amounts and under eligibility rules established by the trustees. *Id.*

Throughout its existence, the 1950 Fund operated on a "pay-as-you-go" basis. *See Roark v. Boyle*, 439 F.2d 497, 506 (D.C. Cir. 1970). In other words, as the Fund received employer contributions, it immediately used the contributions to pay benefits without accumulating a reserve for future years. *Id.* Like many plans of the era, therefore, the 1950 Fund did not promise a vested pension benefit. *See Short v. UMWA 1950 Pension Trust*, 728 F.2d 528, 537-38 (D.C. Cir. 1984). And, when contribution income declined in the 1960's and early 1970's, the Fund was frequently forced to tighten eligibility requirements or reduce benefits to prevent a shortfall. *See Palmer Coking Coal Co. v. UMWA 1950 and 1974 Pension Plans*, 5 Employee Benefits Cas. (BNA) ("E.B.C.") 2369, 2371 (1984) (Gordon, Arb.).

With the advent in 1974 of ERISA's funding and vesting requirements, the UMWA and coal employers recognized the need to overhaul the 1950 Fund's pension structure. Accordingly, as a part of their National Bituminous Coal Wage Agreement ("Wage Agreement") of 1974, the UMWA and employers split the 1950 Fund's pension program into the two existing ERISA-covered pension plans. The 1950 Pension Plan covered miners who retired before January 1, 1976. The 1974 Pension Plan covered active miners and miners who retired on or after January 1, 1976. *Id.*; E.V. 27-33.

To ensure sound funding of these two Plans, the employers and UMWA agreed to increase the contractual

contribution rate to the Plans. During the first years of the 1974 Wage Agreement's term, for example, the signatory employers agreed to contribute $0.56 to the 1950 Pension Plan for each ton of coal they mined. E.V. 28. They also agreed that the amount of benefits and eligibility requirements under the Plans would be determined by collective bargaining and specified in their Wage Agreement. E.V. 31; *see generally UMWA Health and Retirement Funds v. Robinson*, 455 U.S. at 566. For example, the employers agreed that the 1950 Pension Plan would pay a benefit of $200 per month during the first year of the 1974 Wage Agreement's term. E.V. at 31. The employers and UMWA continued this arrangement under each of their succeeding Wage Agreements. The Wage Agreements of 1974, 1978 and 1981 have each promised a defined pension benefit under the 1950 and 1974 Pension Plans, and have each specified the rates of employer contributions to the two Plans. E.V. 31, 69-71, 114-19, 158-63, 286-89.

Petitioners are four related corporations that mined coal in West Virginia between 1976 and 1982. C.A. App. 5-6. Each of the petitioners (hereafter the "Coal Companies" or "Companies") employed UMWA-represented workers. Each of the Coal Companies also signed one or more of the Wage Agreements of 1974, 1978 and 1981. E.V. 1-364. As a result, each of the Coal Companies promised to contribute to the 1950 and 1974 Pension Plans based on their coal mining activities. C.A. App. 9.

In November 1982, the Coal Companies permanently ceased their covered mining operations and contributions under the 1950 and 1974 Pension Plans. C.A. App. 5. Thereafter, the Plans' joint Board of Trustees, who administer both the 1950 and 1974 Pension Plans, determined that this cessation marked the Coal Companies' complete withdrawal from the two Plans under Section 4203(a)(2) of ERISA, 29 U.S.C. § 1383(a)(2). As a result, the Trustees determined that the Coal Companies

incurred withdrawal liability for a share of each Plan's unfunded vested benefits pursuant to Section 4201(a) of ERISA, 29 U.S.C. § 1381(a). C.A. App. 14-29.

The Trustees computed the amount of the Companies' liability in accordance with the allocation procedure Congress established to govern withdrawals from coal industry pension plans. ERISA Section 4211(c)(3), (d)(1); 29 U.S.C. § 1391(c)(3), (d)(1). Under this procedure, the Plans' enrolled actuary first determined the amount of each Plan's "unfunded vested benefits" (or "UVB") as of the last day of the plan year ending before the Companies' withdrawal. ERISA Section 4211(c)(3)(A), 29 U.S.C. § 1391(c)(3)(A). This amount represents the total underfunding of each Plan. Next, the Coal Companies were assigned a share of each Plan's UVB based on the ratio of the Coal Companies' contributions to all participating employers' contributions under that Plan during a five-year base period. ERISA Section 4211(c)(3)(B), 29 U.S.C. § 1391(c)(3)(B). Under this method, for example, an employer who was responsible for 1% of the Plan's contributions would be assigned 1% of the Plan's unfunded liabilities. In the Coal Companies' case, this resulted in an assessment of $1,250,142.63 by the 1950 Pension Plan and $330,389.01 by the 1974 Pension Plan. C.A. App. 386.

The Coal Companies disputed the Plans' withdrawal liability assessments and initiated arbitration of their dispute as required by Section 4221(a) of ERISA, 29 U.S.C. § 1401(a). Among other things, the Coal Companies argued that they should not be required to pay any withdrawal liability to the 1950 Pension Plan even though they had promised to maintain that Plan under the terms of their three Wage Agreements. C.A. App. 44-55. The Coal Companies reasoned that because they had entered the mining business after January 1, 1976, none of their active employees would ever draw benefits

from the 1950 Pension Plan. Rather, all of the Coal Companies' active employees received their pension coverage from the sister 1974 Pension Plan. This fact, according to the Companies, meant that they were not "employers" under the 1950 Pension Plan for purposes of MPPAA's withdrawal liability provisions. C.A. App. 44-45.

The arbitrator rejected the Coal Companies' argument and affirmed the Plans' withdrawal liability assessments. In particular, the arbitrator found that under the plain language of their 1974, 1978 and 1981 Wage Agreements, the Coal Companies had promised to contribute to the 1950 Pension Plan. C.A. App. 25; *see* E.V. 28, 68-69, 115-16, 159-60. From this, the arbitrator concluded that the Coal Companies were "employers" subject to withdrawal liability to that Plan under MPPAA. C.A. App. 25, 29.

The Coal Companies thereafter filed a complaint in the district court seeking modification of those portions of the arbitration award regarding their withdrawal liability to the 1950 Pension Plan. C.A. 4-13. The Coal Companies further argued that the 1950 Pension Plan's withdrawal liability claim denied them substantive due process and worked an unjust taking of property, contrary to the Fifth Amendment to the United States Constitution. C.A. App. 4-13.

The district court rejected the Coal Companies' arguments. It first held that under ERISA, the Coal Companies' "employer" status with respect to the 1950 Pension Plan was defined by their contractual obligation to contribute to that Plan. App. 15a-20a. From this, the district court concluded that MPPAA's formula for assessing employer withdrawal liability in proportion to past contributions under a plan, clearly meant that the Coal Companies were "employers" subject to withdrawal liability to the 1950 Pension Plan. App. 19a-20a.

The district court then addressed the Coal Companies' two constitutional arguments. In so doing, the court relied on *Connolly v. PBGC*, 475 U.S. 211 (1986) ("*Connolly*"), where this Court rejected a Taking Clause challenge to MPPAA, and *PBGC v. R.A. Gray & Co.*, 467 U.S. 717 ("*Gray*"), where this Court rejected a substantive due process challenge to MPPAA. The district court first noted this Court's pronouncement in *Connolly* that—

> it cannot be said that the Taking Clause is violated whenever legislation requires one person to use his or her assets for the benefit of another.

App. 21a (quoting *Connolly*, 475 U.S. at 233). The district court then held, as this Court did in *Connolly*, that MPPAA did not result in a physical invasion or government appropriation of the Coal Companies' property, but instead merely "adjusted the benefits and burdens of economic life to promote the common good." App. 22a (quoting *Connolly*, 475 U.S. at 225). The district court further found this economic adjustment rational as applied to the Coal Companies because the $1,250,142.63 withdrawal liability assessed against the Companies was in proportion to their past contribution experience under the 1950 Pension Plan. App. 6a-7a. The Coal Companies had, after all, contributed steadily to the 1950 Pension Plan between 1976 and 1982 pursuant to the obligation set forth in their 1974, 1978 and 1981 Wage Agreements. E.V. 1-364; C.A. App. 269-282.

Applying a similar analysis, the district court next rejected the Coal Companies' substantive due process attack. The district court held:

> In view of the unique nature of the 1950 Plan and its history of financial instability, together with the undertaking of the plaintiffs under the collective bargaining agreements to contribute to the 1950 Plan at a time when ERISA was in effect and

> MPPAA under consideration, it cannot be said that the withdrawal liability provisions are irrational as applied to the plaintiffs.

App. 37a (citations omitted).

The Coal Companies appealed, and restated each of these arguments to a panel of the United States Court of Appeals for the Fourth Circuit. After retracing the district court's analysis, the panel affirmed the judgment below based "on the well-reasoned opinion of the district court." App. 1a-7a.

SUMMARY OF ARGUMENT

This case called for a straightforward application of this Court's well-settled substantive due process test. The courts below properly applied that test. They recognized, consistent with *Connolly* and *Gray*, that it is neither arbitrary nor irrational for MPPAA to require withdrawn employers like the Coal Companies, who promised to fund a multiemployer pension plan through contributions, to pay withdrawal liability to that plan as their proportionate share of the plan's underfunding. Accordingly, this case raises no new issue under the Due Process Clause that requires this Court's intervention.

ARGUMENT

I. THE DECISION BELOW ACCORDS WITH THIS COURT'S PRIOR DECISIONS UPHOLDING MPPAA AS A RATIONAL RESPONSE TO A LEGITIMATE LEGISLATIVE CONCERN.

The court of appeals' decision correctly applies the rationality test of substantive due process laid down by this Court a half-century ago and reaffirmed in the Court's prior MPPAA decisions. In its first MPPAA case, this Court reiterated the settled rule that economic legislation, such as MPPAA, survives a substantive due process challenge if the legislation presents a rational response to a legitimate legislative concern.

> It is by now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way.

PBGC v. R.A. Gray & Co., 467 U.S. at 729 (citing *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976)). The Court concluded in *Gray* that the withdrawal liability provisions of MPPAA were rational, and therefore constitutional, as they applied to employers who withdrew from multiemployer pension plans during MPPAA's retroactive effective period. *Id.* at 734.

The courts below correctly applied *Gray* to the facts in this case. They first observed that Congress' chief concern in drafting MPPAA was maintaining the solvency of distressed multiemployer pension plans. *See e.g.*, 126 Cong. Rec. 20,183 (1980) (Statement of Sen. Randolph). This concern was particularly acute in the case of the 1950 Pension Plan, which was then among the nation's worst-funded pension plans. *Calvert & Youngblood Coal Co. v. UMWA 1950 and 1974 Pension Plans*, 5 E.B.C. 2361, 2364 (1984) (Polak, Arb.), *enforced*, 6 E.B.C. 1106 (N.D. Ala. 1985). As West Virginia's Senator Randolph observed:

> [W]e have provided strong incentives in this bill to encourage [coal industry] employers to maintain their commitments. . . . By encouraging all employers to continue their obligations and bear their fair share of the plan's responsibilities, the likelihood is significantly lessened that the severe economic pressures envisioned by the bill will ever be reached.

126 Cong. Rec. 20,183 (1980). With this background, the courts below properly concluded that MPPAA rationally imposed liability on those withdrawing employers who,

like the Coal Companies, had promised to fund the 1950 Pension Plan through contributions.

> In view of the unique nature of the 1950 Plan and its history of financial instability, together with the undertaking of the plaintiffs under the collective bargaining agreements to contribute to the 1950 Plan at a time when ERISA was in effect and MPPAA under consideration, it cannot be said that the withdrawal liability provisions are irrational as applied to the plaintiffs.

App. 7a, 37a.

The Coal Companies nevertheless maintain that it is arbitrary and irrational to require them, rather than some other persons, to pay for the 1950 Pension Plan's underfunding. They propose that only those contributing employers whose workers are eligible for pensions under the 1950 Pension Plan should pay withdrawal liability to that Plan. Alternatively, the Coal Companies propose that "utilities and other consumers who purchased coal at perhaps depressed prices during the 1950s and 1960s" should pay the cost of the 1950 Pension Plan's underfunding. Petition at 13.

Whether Congress should have chosen one particular cost-spreading formula over another, however, is "not a question of constitutional dimension." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. at 19 (citations omitted). Indeed, numerous decisions of this Court teach that federal courts do not sit as a super-legislature to reassess the wisdom of a given legislative formula. *E.g.*, *National Railroad Passenger Corp. v. Atchison, Topeka and Santa Fe Railway Co.*, 470 U.S. 451 (1985); *Ferguson v. Skrupa*, 372 U.S. 726 (1963); *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955). Rather, it is constitutionally sufficient that the legislative formula "approaches the problem of cost spreading rationally." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. at 19.

Significantly, this Court has already observed that MPPAA's allocation of liability to those employers who

maintained a pension plan through contributions is a rational cost-spreading formula:

> We are far from persuaded that fairness and justice require the public, rather than the withdrawing employers and other parties to pension plan agreements, to shoulder the responsibility for rescuing plans that are in financial trouble.

Connolly v. PBGC, 475 U.S. at 227. The Coal Companies' desire for a reexamination of MPPAA's allocation formula, therefore, does not warrant this Court's attention.

The Coal Companies nevertheless argue that *Connolly* did not address the more particular question whether the constitutionality of MPPAA's cost-spreading rationale depends on there being a link between the amount of withdrawal liability paid by an employer and the pension benefits actually drawn by that employer's workers. In this regard, the Coal Companies point to the concurring opinion in *Connolly*.

In *Connolly*, the two concurring Justices agreed with the full Court that MPPAA does not violate the Taking Clause of the Fifth Amendment. 475 U.S. at 228. Justice O'Connor suggested in her concurring opinion, however, that imposition of withdrawal liability might raise due process questions under certain circumstances. Justice O'Connor suggested that imposition of liability might be unfair in two instances: (1) where the multiemployer plan in question was a "hybrid" plan that did not promise a fixed or defined pension benefit, 475 U.S. at 229-30, 232-33; and (2) where the "employers had no control over the level of benefits promised" under the plan. 475 U.S. at 235. In such cases, "employer responsibility for benefits specified by the plan is very much attenuated" and employers cannot reasonably be expected to shoulder the responsibility for funding plan benefits. 475 U.S. at 235. Neither circumstance applies to the 1950 Pension Plan. First, the 1950 Pension Plan is a defined benefit plan that

promises pensioners a fixed monthly benefit. E.V. 365-81. And, it has promised fixed benefits since it was created. E.V. 31-33. Thus, the 1950 Pension Plan is not a "hybrid" plan of the type described by the concurring opinion in *Connolly*.

Second, employers in the coal industry have always had direct control over the level of benefits under the 1950 Pension Plan. As this Court has observed, the 1950 and 1974 Pension Plans are the products of collective bargaining. *UMWA Health and Retirement Funds v. Robinson*, 455 U.S. at 565-67. In 1974, employers in the coal industry became concerned about the actuarial and financial soundness of their pension plans. *Id.* at 566. Accordingly, the employers and the UMWA agreed that the amount of benefits and eligibility requirements under the Plans would be determined by collective bargaining and specified in the National Bituminous Coal Wage Agreement of 1974. *Id.* After 1974, the employers continued to control both the contribution levels and the pension liabilities under the Plans through collective bargaining of the 1978 and 1981 Wage Agreements. *Short v. UMWA 1950 Pension Trust*, 728 F.2d at 531-32. Thus, because the employers and the UMWA bargain for the benefits promised by the Plans, they—and not the Trustees of the Plan—ultimately determine the amount of liability that employers may incur upon withdrawal.

Significantly, the concurring opinion in *Connolly* acknowledges that imposition of liability is rational—and therefore constitutional—when employers had control over the level of benefits promised or where the type of benfits and levels of benefits under the plan are set in collective bargaining. 475 U.S. at 229, 235. This is precisely the situation in these coal industry pension plans. The coal industry employers defined the level of benefits and eligibility requirements under these Pension Plans in Article XX of their 1974, 1978 and 1981 Wage Agreements. Thus, the concurring opinion in *Connolly* provides no reason for

questioning the rationality of imposing withdrawal liability upon the Coal Companies under MPPAA.

II. PETITIONERS RAISE NO NEW ISSUE CONCERNING THE BOUNDS OF SUBSTANTIVE DUE PROCESS.

The Coal Companies incorrectly conclude that the decision below invites other federal courts to disregard the limits of the Fifth Amendment's Due Process Clause. The courts below did not, as the Companies suggest, "effectively remove the rationality requirement" of substantive due process. Rather, both courts stressed that "[a] statute regulating economic benefits and burdens does not violate the Due Process Clause if it is a *rational means* to achieve a legitimate legislative purpose," App. 29a (emphasis added), and that "it cannot be said that the withdrawal liability provisions [of MPPAA] are irrational as applied to plaintiffs." App. 7a, 29a. Accordingly, the courts below plainly applied the rationality test to MPPAA, as required by *Gray* and *Connolly*.

The Coal Companies evidently believe, however, that in *Usery v. Turner Elkhorn*, 428 U.S. 1, this Court meant to condition the rationality of employee benefits legislation like MPPAA on the legislation's similarity to traditional workers' compensation laws. In particular, the Companies assert that MPPAA can rationally be applied only if there is an "employer-employee relationship between the withdrawing employer and the participants who were to benefit from the withdrawal liability paid into the plan." Petition at 15.

In the first place, nothing in *Turner Elkhorn* holds that the rationality test of substantive due process requires a precise matching of employer liability payments to particular employees. Rather, *Turner Elkhorn* and other decisions of this Court teach that substantive due process strictures permit the legislature to use its own judgment of how best to spread the costs of economic regulation.

For this reason, the Court has upheld the validity of numerous cost-spreading statutes, irrespective of their similarity to "traditional" compensation schemes. *See, e.g., Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495 (1937) (unemployment compensation funded by tax on employers); *Nobel State Bank v. Haskell*, 219 U.S. 105 (1911) (mandatory deposit insurance funded by premiums based on average daily bank deposits of all depositors); *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) (minimum wage law).

More important, by suggesting that rationality requires an employer's withdrawal liability to be used only to fund the benefits of that particular employer's workers, the Coal Companies ignore the design and function of multiemployer pension plans. The essence of a multiemployer pension plan is the pooling of assets and liabilities by groups of employers. D. McGill, *Fundamentals of Private Pensions*, 78-79 (3d ed. 1975). Thus, one employer's contributions are not assigned to a separate account for that employer's workers. Rather, the plan combines the contributions of many employers and pays benefits out of the pool of funds to the broader universe of plan beneficiaries. *Central States Pension Fund v. Bellmont Trucking Co.*, 610 F. Supp. 1505, 1513 (N.D. Ind. 1985), *aff'd*, 788 F.2d 428 (7th Cir. 1986). In short:

> The whole purpose behind multiemployer pension plans is to pool resources to pay all participants their accrued benefits; withdrawal liability serves the purpose of protecting the pool and thus the 'benefit security" of participants in the plan. Withdrawal liability is therefore more than an obligation to one's employees; it is an obligation to the Fund, the participants in it, and the other contributing employers.

Central States Pension Fund v. Bellmont Trucking Co., 610 F. Supp. at 1505 (citations and footnote omitted).

By so sharing the costs of providing pensions, contributing employers provide a more valuable benefit package for their wage and benefit dollar. *See Washington Star Co. v. ITU Negotiated Pension Plan*, 582 F. Supp. 301, 303-04 (D.D.C. 1983), *aff'd*, 729 F.2d 1502 (D.C. Cir. 1984). This and other features make a multiemployer pension plan the type of plan that "the employer might himself have established in his own economic interest." *Roark v. Boyle*, 439 F.2d at 506. *Accord Washington Star*, 582 F. Supp. at 303-04. Given this structure, and its attendant benefit to contributing employers, it is not remarkable that Congress based an employer's withdrawal liability to a multiemployer plan on that employer's contributions to the plan, rather than on the benefits paid by the plan to any one set of workers.

In sum, rather than discarding the settled rationality test of substantive due process, the courts below merely applied that test to the facts of this case. Consequently, this case does not require the Court to reexamine the bounds of Congress' power to "adjust the benefits and burdens of economic life."

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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